INNOVISTA LAW | PLLC

G. David Carter | Member
david.carter@innovistalaw.com
RICHMOND: 804.729.0052
WASHINGTON: 202.869.1502

August 24, 2018

VIA ECFS
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155**

Dear Ms. Dortch:

In the Notice of Proposed Rulemaking released on June 5, 2018, in WC Docket Number 18-155, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, the Commission premised its proposed access stimulation reforms on the unsubstantiated assertion that access stimulation "harms consumers."[1] Similar unsupported claims were also made in the comments and reply comments submitted by various interexchange carriers and CEA providers, who also made passing allegations that access stimulation, as it currently operates, is "inefficient."[2]

The Competitive Local Exchange Carriers ("CLECs")[3] responded to the unsupported claims made by the Commission, IXCs, and CEA providers with counter-arguments and, more importantly, data, evidence, and facts, showing that consumers – along with IXCs and CEA providers – actually *benefit* from access stimulation. Moreover, the CLECs emphasized to the Commission how important it is that the agency engage in an evidence-based decision-making process in its rulemaking proceedings, including the rulemaking proceeding in WC Docket Number 18-155. Indeed, the Commission's new Chief Economist, Dr. Babette Boliek, has previously noted how important it is for an expert agency, such as the FCC, to "delve deeply into

---

[1] *See In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, ¶ 1 (June 5, 2018).

[2] *See, e.g.*, Comments of AT&T, at 2, WC Docket No. 18-155 (July 20, 2018); Comments of Verizon Communications, Inc., at 2, WC Docket No. 18-155 (July 20, 2018).

[3] The CLECs included are BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communication Corporation, Northern Valley Communications, LLC, Louisa Communications, and OmniTel Communications. OmniTel Communications has just recently joined the CLEC coalition referenced here and agrees with and supports all of the statements made by the CLECs thus far in their comments, reply comments, and *ex parte* meetings with Commission staff members.

engineering, economics, and other fields implicated by its ruleamaking and to defend itself based on the record."[4]

Clearly, the Commission's decisions with respect to reforming the access stimulation marketplace should be based on evidence and economics. Thus, to further support their positions and assist the Commission in its evidence-based decision-making process, the CLECs now submit the Expert Report of Dr. Daniel E. Ingberman, attached hereto as **Exhibit A**, which concludes that the current access stimulation regime: (1) does not harm consumers; (2) is efficient; and (3) will not become more efficient by imposing new regulations or reallocating existing access stimulation traffic away from the access-stimulating CLECs.

As the CLECs have already noted, the rules proposed by the Commission in the Access Stimulation NPRM are vague and provide insufficient guidance. Moreover, the proposals are not premised on data, evidence, or substantiated facts and go against the data, evidence, and facts that the CLECs have provided to the Commission. The analysis and conclusions contained in Dr. Ingberman's Expert Report only further support the CLECs' positions. Additionally, they signal that the Commission must proceed only after obtaining and reviewing relevant data and evidence from the IXCs and CEA Providers.[5]

Accordingly, instead of proceeding with piecemeal and discriminatory reforms that conflict with the Commission's goal of a unified intercarrier compensation system, the CLECs encourage the Commission to retract its proposed reforms and close this docket, or, at the very least, obtain relevant data and evidence from all interested parties before proceeding any further.

Sincerely,

G. David Carter

Attachment

---

[4] Babette Boliek, *The FCC's Evidentiary Problem*, 12 J. L. & POL'Y FOR INFO. SOC'Y 45, 45 (2015). *See also id.* at 56-57 ("[A]n agency's judgments about the 'likely economic effects of a rule … must be based on some logic and evidence, not sheer speculation.'") (quoting *Sorencoson Communications, Inc. v. FCC*, 755 F.3d 702, 708 (D.C. Cir. 2014)).

[5] *See id.* at 46-47 ("[A]n agency is not permitted to make decisions that are 'arbitrary and capricious' under the law…. [A]n 'arbitrary and capricious' challenge [is] based on the underlying record … [and] when a plaintiff can establish a prima facie case that the agency has ignored substantial issues or mischaracterized the evidence, a reviewing court should move from a deferential to a skeptical review of the agency's evidentiary record. In other words, even an expert agency should be forced to take on the burden of persuasion once a challenger shows the agency has played fast and loose with findings that are material or, at least, significant to its decision making.") (internal citations omitted).